

James Bickford (N.Y. Bar No. 5163498)
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20530
James.Bickford@usdoj.gov
Telephone: (202) 305-7632

Attorney for Defendant

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

GARY ZIEROTH, as representative of the estate
of SHARON ZIEROTH,

Plaintiff,

v.

ALEX M. AZAR II, in his official capacity as
Secretary of Health and Human Services,

Defendant.

Case No. 3:20-cv-172 (MMC)

**MOTION FOR EXTENSION OF TIME
TO FILE CROSS-MOTION FOR
SUMMARY JUDGMENT AND
OPPOSITION TO PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

1 The Secretary of Health and Human Services respectfully requests a 90-day
2 extension of his time to file a cross-motion for summary judgment and opposition to
3 plaintiff's motion for summary judgment, which are currently due June 19, 2020. This
4 case concerns a denial of Medicare Part B coverage for a continuous glucose monitor.
5 Under the terms of CMS Ruling 1682-R, the device at issue here is not covered as
6 durable medical equipment. The Medicare Appeals Council followed that Ruling in
7 denying coverage, as it was required to do. 42 C.F.R. § 401.108. Plaintiff argues that
8 this denial, and the CMS Ruling on which it rests, are contrary to the definition of durable
9 medical equipment in the Medicare statute and regulations. *See* 42 U.S.C. § 1395x(n); 42
10 C.F.R. § 414.202.

11 The Secretary is currently reconsidering his position on whether devices such as
12 the continuous glucose monitor at issue here are durable medical equipment within the

1 meaning of the Medicare statute and regulations. The Secretary expects that, within the
2 next 90 days, he may take some action as a result of this reconsideration, and that such
3 action (if taken) may affect the resolution of this case. The Secretary therefore
4 respectfully moves this Court for a 90-day extension of time to file his cross-motion for
5 summary judgment. If the Secretary takes action on his reconsideration before his cross-
6 motion is due, he will promptly inform the Court and suggest a modified schedule for
7 further proceedings as appropriate.

8 Undersigned counsel has conferred with counsel for plaintiff, who opposes this
9 motion.

Respectfully submitted this 15th day of June, 2020,

JOSEPH H. HUNT
Assistant Attorney General

MICHELLE BENNETT
Assistant Director, Federal Programs Branch

/s/ James Bickford
JAMES BICKFORD
Trial Attorney (N.Y. Bar No. 5163498)
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20530
James.Bickford@usdoj.gov
Telephone: (202) 305-7632

Counsel for Defendant